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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 RELEVENT SPORTS, LLC,

4 Plaintiff,

5 v.

22 CV 2917 (VM)
Remote proceeding

6 CARMELO STILLITANO,

7 Defendant.

8 -----x
9 New York, N.Y.
April 18, 2022
2:00 p.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13
14 APPEARANCES (Telephonic)

15 GIBSON, DUNN & CRUTCHER LLP
Attorneys for Plaintiff
16 BY: HARRIS MUFSON

17 DAVIDOFF HUTCHER & CITRON LLP
Attorneys for Defendant
18 BY: LARRY HUTCHER

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(Via teleconference)

THE COURT: This is Judge Victor Marrero and this is a proceeding in the matter of Relevant Sports v. Stillitano.

The Court scheduled this proceeding as a hearing on the request of Relevant Sports' restraining order and temporary preliminary injunction which the Court granted a week ago and asked the parties to submit their written papers by today, actually by Friday.

The Court has received and reviewed the papers submitted by the parties very closely, so we're here to hear the parties' supplemental arguments, if any. I would advise not to repeat what you already exhaustively set forth in your memoranda of law and the declarations that go along with them, instead, focus on some important threshold issues that the Court has identified and on which I believe it would be most productive for the parties to guide their arguments.

Before we proceed, let me make sure we have the court reporter on this line.

COURT REPORTER: Good afternoon, your Honor, yes, you do, it's Michael McDaniel, the court reporter.

THE COURT: Thank you.

As the parties are aware, there is an underlying arbitration proceeding going on relevant to this action before this Court. In that arbitration proceeding, there are a number of issues that I consider threshold disputes, factual disputes

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1 between the parties which would need to be resolved by the
2 arbitrator. Some of those questions include whether
3 Mr. Stillitano's salary reduction in 2021 was by mutual
4 agreement or was it a unilateral imposition by Relevant? Did
5 that reduction represent deferred compensation and did
6 Mr. Stillitano object to the reduction? And if so, how was
7 that expressed?

8 Another factual dispute that is threshold here is:
9 Was Mr. Stillitano's termination of employment by Relevant
10 without cause and without consent or was he terminated at his
11 request so as to qualify for severance pay?

12 I do not believe it would be productive for discussion
13 of these factual disputes in this proceeding insofar as they
14 are critical issues that are to be resolved in the arbitration
15 proceeding. However, there is a question that arises. The
16 arbitration proceeding, of course, is pursuant to the
17 employment agreement. The action before this Court flows out
18 of the parties' covenants agreement, and so one question is:
19 What is the relationship between the employment agreement and
20 the covenants agreement?

21 Out of that question there arises another, which is:
22 To what extent is there anything in the parties' underlying
23 understanding and agreements indicating that a violation of the
24 employment agreement would nullify the covenants agreement?

25 The implication of that issue for this proceeding is

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1 whether, to the extent there is uncertainty between the two
2 agreements, whether it would be more prudent for this Court to
3 stay further proceedings here while the parties conclude the
4 arbitration, and depending upon which way the arbitration goes,
5 of course, if there is an end to the relationship between the
6 two agreements that then could be dispositive of the action
7 before this Court.

8 There is another major factual issue which would be an
9 important question, which is: Was Relevent aware of
10 Mr. Stillitano's business activities after his termination, and
11 if so, when did Relevent become aware of it and did it express
12 objections?

13 Another question arises concerning the termination of
14 Mr. Stillitano and its connection to the covenants agreement.
15 Apparently Mr. Stillitano was terminated in May of 2021, so one
16 important question is: To what extent does the covenants
17 agreement effectively expire on May 7 of this year, and if so,
18 what is the practical effect of that expiration on this
19 proceeding?

20 There is a major dispute among the parties also
21 concerning whether or not the restrictive covenant as to
22 geography and duration is reasonable, and there's a major
23 difference between the parties as well as to whether or not
24 Relevent has made a sufficient case of irreparable harm.

25 So those are some preliminary thoughts on the issues

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1 of the parties to be focused on at this hearing. Let me ask
2 that each of you have an initial ten minutes for argument and
3 then we'll determine to what extent any more is indicated.

4 Let's proceed then with the presentation on behalf of
5 Relevent, the plaintiff.

6 MR. MUFSON: Thank you, your Honor, this is Harris
7 Mufson from Gibson Dunn on behalf of plaintiff Relevent Sports.

8 I will do my best to address the list of issues that
9 you laid out during the course of my presentation, and I will
10 do also my best not to belabor the submissions that are already
11 before the Court.

12 So Mr. Stillitano concedes that he has breached his
13 non-competition and non-solicitation agreement with Relevent.
14 That is not disputed. He acknowledges that he and his business
15 partners have been replicating Relevent's core business by
16 organizing soccer matches involving the same European soccer
17 clubs at the same venues and with the same media partners. In
18 fact, he's attempting to replicate the same match at the same
19 location that he organized during his employment with Relevent.

20 Stillitano's opposition identifies quote, unquote, the
21 principal issue before the Court is whether the restrictive
22 covenant is enforceable, and in arguing that the restrictive
23 covenant is unenforceable, Mr. Stillitano raises a number of
24 arguments, none of which are viable, and I'm going to address
25 each of those in sequence.

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1 First, Mr. Stillitano argues that Relevent breached
2 his employment agreement by reducing his salary in May of 2020
3 and not paying him all of the severance benefits that are set
4 forth in the employment agreement. And I understand, Judge
5 Marrero, that you raise a question about that, too, which I
6 will address.

7 No question there are factual disputes about that
8 issue. Relevent disputes that the salary reduction was
9 characterized as a deferral or that Mr. Stillitano was ever
10 promised that he would be made whole, but what I want to focus
11 on are the undisputed facts. So it is undisputed that
12 Mr. Stillitano's salary was reduced in May of 2020. It is also
13 undisputed that in June of 2020, Mr. Stillitano sent a letter
14 to Relevent and requested that Relevent restore his base salary
15 to \$625,000, which is Exhibit C to Mr. Stillitano's affidavit.

16 I will note that in that letter Mr. Stillitano refers
17 to the reduction as a salary reduction and not a deferral, but
18 regardless, that letter was sent. Relevent, after receiving
19 that letter, rejected Mr. Stillitano's request. It never
20 raised Mr. Stillitano's salary, maintaining it at \$200,000
21 during the remainder of his employment.

22 Mr. Stillitano did not resign for good reason, which
23 is set forth in his employment agreement, and I will come back
24 to that in a moment. Instead, he received the \$200,000 in
25 salary and continued to perform his role as executive chairman

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1 for over a year until May 7, 2020. It's also undisputed that
2 Mr. Stillitano electronically acknowledged his \$200,000 salary
3 on two separate occasions during the remainder of his
4 employment.

5 Now Mr. Stillitano's employment contract, the
6 employment agreement, provided that he could be terminated at
7 any time by the company with or without cause, or by
8 Mr. Stillitano for any reason, meaning he was employed at will.
9 And Mr. Stillitano concedes that point at page 14 of his brief.

10 Now it is settled law that an employer's unilateral
11 changes to compensation do not constitute a breach of contract
12 where, as here, an at-will employee ratifies the change by
13 remaining employed and accepting the reduced compensation, and
14 we cited the *Giannone* case and the *Campeggi* case in our brief
15 that stand for that proposition.

16 This proposition is true even where an employment
17 agreement contains a modification provision requiring a signed
18 document approved by the executive and the company to modify
19 the agreement. For example, in *Corel v. Clark*, 514 N.Y.2d 766,
20 767, the Second Department held the fact that an original
21 agreement in that case required amendments or modification in
22 writing is not dispositive if the evidence taken as a whole
23 shows that the amendment was authentic or was ratified by the
24 party's conduct.

25 Mr. Stillitano cites a single case in support of his

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1 argument, which is the *Gootee* case from the First Department in
2 2016. He miscites that case. In *Gootee*, the First Department
3 did not agree that the employer breached the employment
4 agreement by reducing the employee's salary and benefits
5 without a signed writing in that case. Instead, the Court
6 merely held that there were factual issues precluding summary
7 judgment for either party. The *Gootee* decision actually
8 supports Relevent's position because the court in that case
9 acknowledged that a fact finder could conclude that the former
10 employee ratified the alterations of the terms and conditions
11 of his employment by continuing to perform his role as a
12 consultant.

13 So here, because Stillitano indisputably accepted the
14 reduced salary, Relevent did not breach the agreement by
15 reducing his salary. It paid him all of the compensation that
16 he earned in accordance with the employment agreement.

17 I will just pause here also to note that even the
18 allegations on their face by Mr. Stillitano that there was some
19 sort of oral promise to him that was made that he would be made
20 whole is violative of the statute of frauds. It is ambiguous,
21 vague, even on its face, the allegation, and it's not clear
22 that that could be performed within one year. So there are
23 also legal defenses, not just factual defenses to the arguments
24 that were raised by Mr. Stillitano.

25 THE COURT: Mr. Mufson, let me point out that you've

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1 used up most of your time already and you have not reached the
2 threshold question that I posed, which is to what extent is
3 there a connection between the employment agreement, which is
4 the subject of arbitration, and the covenants agreement, which
5 is the subject of this issue? Is there anything in the record
6 to suggest that a violation of the employment agreement
7 nullifies the covenants agreement?

8 If that's the case, why should the Court not stay this
9 matter pending the arbitration?

10 MR. MUFSON: So your Honor, there is nothing in the
11 employment agreement that states on its face or otherwise
12 indicates that a breach of the employment agreement nullifies
13 the covenants agreement. Actually to the contrary, directing
14 your attention to paragraph 9 of the covenants agreement, which
15 is Exhibit 1 to the verified complaint in this case, paragraph
16 9 says that Mr. Stillitano understood and agreed that the
17 restrictions contained in the covenants agreement are intended
18 to and shall apply from the date hereof through respective
19 periods of applicability regardless of whether executive's
20 employment with the company is terminated by the company or by
21 the executive, and regardless of the reason, meaning if the
22 company had good reason -- excuse me, if Mr. Stillitano
23 established good reason, which in his employment agreement
24 includes a reduction of his salary, that would give him good
25 reason to resign. Paragraph 9 makes clear that he is still

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1 bound by the restrictive covenants because it applies for any
2 reason whatsoever and regardless of the reason for his
3 termination.

4 That paragraph continues that Mr. Stillitano
5 understood and agreed that in the event his employment with the
6 company is terminated, again whether by the company or by him
7 and regardless of the reason, the restrictions contained herein
8 as well as all other applicable terms, conditions and
9 provisions of this covenants agreement shall survive.

10 So we submit, your Honor, that they are distinct, that
11 even if Mr. Stillitano proves in arbitration that Relevant
12 breached the agreement, which we don't think we did because he
13 ratified the change, these are two separate agreements, that he
14 still has to abide by the covenants agreement. He can't
15 compete with us.

16 If he wins in arbitration, he can collect monetary
17 damages. He can get the back pay that he believes he's
18 entitled to. He can get the severance he believes he's
19 entitled to. We believe he's not entitled to any of it because
20 he ratified the change to his base salary and accepted it, and
21 in addition, he never signed a release in the form acceptable
22 to Relevant, and therefore is not entitled to any severance.

23 So there are factual disputes about that, but we
24 believe these are separate issues and he should be bound to the
25 non-compete that he agreed to and agreed that would apply

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1 regardless of any reason for his termination, particularly
2 through May 7.

3 We believe it should be extended due to inappropriate,
4 bad faith conduct that occurred, which I'm happy to address as
5 well, and that's in the submissions to the Court, but at a
6 minimum --

7 THE COURT: Mr. Mufson, take one more minute and
8 address the question of what authority there is for the
9 covenant to remain in effect past May 7 of this year.

10 MR. MUFSON: Well, we believe that we're entitled to
11 equitable relief, your Honor. In our brief, we cite cases
12 standing for the proposition that courts, particularly in light
13 of the facts and circumstances here where Relevant was duped
14 and led to believe that Mr. Stillitano would comply with his
15 restrictive covenants agreement, all the while, he was using
16 third parties' proxies to compete behind Relevant's back and do
17 precisely what he is contractually obligated not to do and
18 organize the same soccer matches with the same teams about
19 which he had highly proprietary confidential information which
20 undoubtedly causes irreparable harm to Relevant.

21 Mr. Stillitano has intimate knowledge of Relevant's
22 contractual agreements with these parties, the fee rights
23 agreement that they negotiated, the contacts that they have at
24 these venues, these are extremely rare and highly sophisticated
25 contacts and agreements. This is a very small universe in

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1 terms of the soccer events business, and Mr. Stillitano is an
2 extremely unique position given his high profile nature in the
3 industry and all of the information that he gleaned during his
4 employment with Relevent, to then turn around and overtly and
5 brazenly breach his covenants agreement, all the while telling
6 Relevent that he was intending to comply and hiding that
7 information from us, we submit, your Honor, provides the Court
8 with ample basis to extend the term of the non-compete during
9 the period of non-compliance.

10 I would say there was one question the Court asked,
11 whether or not the Court should stay proceedings pending the
12 disposition of the arbitration. For the reason that I
13 articulated in paragraph 9 of the restrictive covenants
14 agreement, we view these as separate agreements, but
15 regardless, if the Court does maintain the TRO in place
16 through, at a minimum, through May 7, that at least would
17 somehow mitigate some of the damage, but if the Court vacates
18 the TRO there's no way that Relevent will be able to make up
19 that irreparable harm that it will suffer. It can win at the
20 arbitration and still suffer the irreparable harm by virtue of
21 Mr. Stillitano overtly competing with us during the remainder
22 of the non-compete period which will dramatically and
23 drastically and permanently harm Relevant's business.

24 THE COURT: Thank you.

25 Let me then turn to Mr. Stillitano. It's Mr. Hutcher?

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1 MR. HUTCHER: Yes, good afternoon, your Honor, Larry
2 Hutcher of Davidoff Hutcher & Citron for the defendant Charlie
3 Stillitano.

4 First of all, your Honor, there is no doubt that this
5 restrictive covenant agreement is incorporated in the
6 employment agreement. There is an express clause in the
7 employment agreement, paragraph 13, that states restrictive
8 covenants applicable to executive which executive agrees to
9 comply with fully and which executive acknowledges shall be
10 strictly enforced by the company as set forth in the employee's
11 covenant agreement. So it is clear that it is to be construed
12 as an integral part of the employment agreement. Therefore, a
13 breach of the employment agreement, by necessity, must also
14 impact the restrictive covenant agreement. For counsel to
15 argue they are separate and distinct is simply not a good faith
16 argument, that they argue they could stop making any payment
17 after day one and then that he would still be subjected to a
18 non-compete is just simply nonsensical.

19 What is interesting, Judge -- and I want to point out
20 with respect to the arguments that Charlie accepted this, what
21 counsel has failed to address is an integral part of our
22 claimed breach which is that the severance that they had agreed
23 to pay to Stillitano was first in the amount of \$650,000. If
24 Stillitano had agreed to a redaction in his salary, the amount
25 that they would have paid under severance at that time would

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1 have been 200,000. Indeed, they didn't pay 200,000, they
2 agreed to pay him 650,000, and they breached the agreement by
3 not paying him 650,000 in 12 months as required under the
4 agreement but they unilaterally decided to pay it over 24
5 months. That, in and of itself, is a clear breach of the
6 contract that nullifies the enforceability of the restrictive
7 covenant.

8 Second -- and if I'm going too quick, your Honor, I
9 apologize, but I want to stick to the limit.

10 You asked whether Relevant was aware of Stillitano's
11 competitive acts. We have attached documentary evidence to the
12 moving papers consisting of text exchanges that show as early
13 as November 2021 that Relevant not only knew of the fact that
14 Stillitano was competing, the president of the company,
15 Sillman, received an inquiry from a reporter concerning
16 Charlie's acts and Sillman said to the reporter: This isn't
17 us, this is Stillitano. Why don't you reach out to him?

18 And then the following month Stillitano tells Sillman:
19 I'm going to Milan to meet with Serie A to do work on soccer
20 matters -- which would have been a clear violation of the
21 restrictive covenant. And what does Sillman say to him? Good
22 luck. Have safe travels. Why don't you do this, come back and
23 come to our Christmas party. Love you.

24 Your Honor, if somebody has been breaching an
25 agreement and has violated a restrictive covenant, do you tell

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1 them, "Love you?" Do you tell them come to the Christmas
2 party, and after you come to the Christmas party do you say,
3 "Great to see you, wish you well?" Your Honor, that is not the
4 actions of a company that believes somebody has violated a
5 restrictive covenant. That's just not the way companies act.

6 Relevant knew that they had breached the contract by
7 failing to pay Charlie the agreed-upon salary and they knew he
8 had to earn a living. The restrictive covenant that he entered
9 into denies him any ability to live. Stillitano has not earned
10 a dime from soccer. He made a few bucks by announcing things
11 on the radio, and he actually had to go out and mortgage his
12 home in order to survive. This restrictive covenant is so
13 broad in terms of geographic scope and duration that it is
14 clearly unenforceable and it should be vacated.

15 Your Honor asked what the practical effect of the
16 restrictive covenant's expiration was on May 7, 2022. It is
17 clear that the only ability that this Court has is to keep the
18 status quo. Any extension of that TRO beyond May 7 would
19 constitute a clear violation of well-established rules. And I
20 refer your Honor to the case of *Benihana, Inc. v. Benihana of*
21 *Tokyo, LLC*, 784 F.3d, 887. And the court in that case held
22 where the parties have agreed to arbitrate a dispute, a
23 district court has jurisdiction to issue a preliminary
24 injunction to preserve the status quo pending arbitration. It
25 can't do any more than that. It doesn't have the ability to

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1 extend the restrictive covenant beyond May 7. I'm not
2 admitting, Judge, that it shouldn't even be immediately
3 vacated, but to the extent that it does exist, it cannot go
4 beyond May 7.

5 Most important, your Honor, is this claim that
6 Relevant has suffered irreparable harm. It is anything but the
7 case. We have shown by documentary evidence that Relevant knew
8 as early as eleven months ago that Charlie was competing, and
9 not only did it not complain, it didn't take any action, and in
10 fact, assisted him by referring reporters to him. The fact
11 that they stood on their rights in and of itself shows that
12 they have not suffered irreparable harm.

13 I want to direct your Honor to a decision you rendered
14 in 2020 entitled *KDH Consulting Group v. Iterative Capital*
15 *Management* where you denied a preliminary injunction where the
16 plaintiff in that case knew of the breach in March 1, 2020, yet
17 didn't move for injunctive relief until April 18, 2020. So
18 your Honor found where a five-week delay was in and of itself
19 sufficient to deny a preliminary injunction, here we have an
20 unequivocal delay of not less than eleven months.

21 And your Honor, this is what is telling: Even after
22 they served a cease and desist letter, they waited over five
23 weeks before submitting the application for a preliminary
24 injunction. And in that application, Judge, they never
25 informed you that there was a pending arbitration. It is clear

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1 that Relevant has played fast and loose not only with Charlie
2 Stillitano, but the way they are bringing information before
3 this Court. I am certain that Relevant was aware of
4 Stillitano's competition, they didn't act, and they are bound
5 by that failure. That delay in moving by itself summarily
6 warranted the vacatur of the TRO and the denial of the
7 preliminary injunction.

8 As your Honor has said in other cases, in the
9 *Accenture* case, *Accenture LLP v. Spreng*, you said temporary
10 restraining orders and preliminary injunctions are among the
11 most drastic tools in the arsenal of judicial remedies and must
12 be used with great care. Your Honor found that because there
13 were questions of fact that the -- you said, quote, the Court
14 finds that Accenture's request can be appropriately addressed
15 within the context of the arbitration and should be directed to
16 the arbitrator administering this arbitration.

17 Similarly, in this case, Judge, there is an existing
18 arbitration. Whatever rights and remedies exist between the
19 parties should be determined in that arbitration. The parties
20 in their contract, that Relevant is so anxious to enforce,
21 stated and agreed upon a method of dispute resolution. That
22 was the arbitration. And it is for that reason your Honor
23 should vacate the TRO, deny the preliminary injunction, and
24 direct the parties to the arbitration.

25 I think I have 40 seconds to spare, your Honor, but I

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1 will waive those.

2 THE COURT: Thank you. Let me ask you one last
3 question. In your papers you made a statement that is somewhat
4 vague that Mr. Stillitano was advised -- you don't indicate
5 whom, when, where and why -- the breach by reduction of his
6 compensation constituted an invalidation of the covenants
7 agreement. This is basically coming back to the question that
8 I posed earlier. Who advised Mr. Stillitano that there was
9 that connection and that, therefore, he was free to engage in
10 competitive activities notwithstanding the covenants
11 agreement?

12 MR. HUTCHER: Well, your Honor, I will readily admit
13 that it was we as counsel that told him that. And the reason I
14 didn't submit a declaration was there was a concern that there
15 would be a waiver of the attorney-client privilege. But we
16 have cited to many cases that hold that where a party
17 benefiting from a restrictive covenant in a contract breaches
18 that contract, the covenant is not valid and enforceable
19 against the other party. So there is an overwhelming amount of
20 cases that stand for that proposition, and yes, it was me who
21 informed Mr. Stillitano that that breach was a reason that he
22 was free to act.

23 THE COURT: All right. Thank you.

24 I will give Mr. Mufson two minutes to rebut.

25 MR. MUFSON: Your Honor, we appreciate the time, but

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1 we did not have an opportunity to reply. Ordinarily, we would
2 have had an opportunity to submit a reply submission. Because
3 of the defendant's request for an accelerated hearing, we were
4 not given the opportunity to reply. I thought that we were
5 going to be given a full opportunity to reply, so I would
6 appreciate, with leave of the Court, some additional time to
7 address a number of these arguments that were raised for the
8 first time in Mr. Stillitano's submission.

9 THE COURT: All right. Thank you. I will give you
10 five minutes.

11 MR. MUFSON: Okay. Well, first of all, in terms of
12 the first argument about the separation between the employment
13 agreement and the covenants agreement, I will just note that
14 numerous courts, including the Second Circuit, have recognized
15 that an employer can lawfully withhold severance benefits when
16 an employee is actively breaching a valid restrictive covenant.
17 So the *Bradford* decision, 501 F.2d 51, a Second Circuit
18 decision, *Bausch & Lomb*, 630 F.Supp. 262.

19 So here, if there was a breach, for example, if
20 Relevent failed to pay the severance benefits, that is
21 something that can be adjudicated in arbitration, but the
22 parties agreed that they would adjudicate any breach of the
23 restrictive covenant agreement in court. That's what the
24 agreement said. There's a forum selection clause that
25 expressly permits Relevent to seek injunctive relief in this

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1 Court.

2 So the issue is before this Court whether or not the
3 restrictive covenant is valid and is breached. That's the
4 issue for this Court, not an issue for the arbitration. And by
5 the time an arbitrator reaches a decision on that issue, it
6 could be a year from now. And what can they do? They can't
7 put the genie back in the bottle if this Court does not address
8 the fundamental question of whether or not the non-compete is
9 enforceable. And we submit, your Honor, that it is fully
10 enforceable, that the agreement is narrowly tailored, it does
11 not prohibit Mr. Stillitano from working in the entire soccer
12 industry, which is unlike any of the cases that are cited by
13 Mr. Stillitano in his brief, that it's very narrowly
14 restrictive, that it only prohibits him from directly
15 interfering with our relationship with our business partners.
16 That's what it does. He can go represent soccer players as an
17 agent, he can go commentate on soccer like he's been doing, he
18 can do a number of things, he just can't interfere with our
19 core business, and that's markedly different than some of the
20 cases that he cites in his brief.

21 I would note that in terms of irreparable harm, there
22 was no undue delay in enforcing the restrictive covenant
23 agreement. In November of 2021, Relevant heard that Stillitano
24 was working for an Italian soccer league. That's not
25 necessarily competitive activity. That's why they asked him to

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1 clarify what he was doing and reminding him of his contractual
2 obligations. We were not on notice that he was actively trying
3 to compete with us by organizing soccer matches with our
4 partners. We didn't learn that until the beginning of 2022,
5 and at that time we immediately reached out to Mr. Stillitano's
6 counsel, who told us -- and the submissions are before the
7 Court -- that he was interested in resolution, so we entered
8 into settlement discussions.

9 And as set forth on page 15 of our brief, the *Cortland*
10 *Line* decision, the Court can excuse any delay caused by
11 attempts to resolve the matter without litigation. That is
12 precisely what we did. We entered into long, extensive
13 settlement discussions with Mr. Stillitano. Mr. Stillitano's
14 counsel represented that he would abide by his non-competition
15 agreement. Then we sent him an agreement that memorialized the
16 terms that the parties had entered into, we heard nothing for a
17 few weeks, I went back. Then we heard that he was actually
18 competing again through business partners.

19 I reached out again to Mr. Stillitano's counsel, who
20 then said no, you have things wrong. That is in my letter of
21 April 15. We attached the communication that we had things
22 wrong, we didn't understand the facts, and we were strung along
23 and led to believe that he was going to comply. And then what
24 he did was he asked for another \$800,000 in his agreement that
25 was never agreed upon. And as soon as we realized there would

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1 be no agreement and he was competing, we then sought judicial
2 intervention. So the notion that Relevent was on notice of
3 this violation for eleven months is just not accurate. It's
4 not supported by any of the facts in the record.

5 And the notion that Mr. Sillman told Mr. Stillitano
6 that he loved him in December has nothing to do with anything.
7 Mr. Stillitano was like a grandfather to Mr. Sillman and he
8 treated him like that, and he was doing everything that he
9 could to bring Mr. Stillitano in compliance, and we engaged in
10 good faith settlement discussions to try to accomplish that
11 short of litigation. All the while, Mr. Stillitano was
12 competing behind our backs and lying to us.

13 So if anything, that forms the basis, along with the
14 false submissions that were made by counsel, that we put --
15 that are made clear in my letter of Friday, April 15, that the
16 statements that were made in their brief and Mr. Stillitano's
17 affidavit are just plain false. And all of these underhanded
18 tactics that Relevent suffered while it tried in good faith to
19 resolve this short of litigation cannot possibly be used
20 against us, but it is markedly different than the *KD* case that
21 Mr. Stillitano cites.

22 In terms of the scope of the non-compete, it is
23 reasonable in length and geography. Courts routinely uphold
24 non-competes for a year, particularly with key executives with
25 unique skills like Mr. Stillitano.

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1 The geographic scope is also reasonable. Relevant's
2 core business is organizing soccer matches between the top
3 European soccer clubs in the world. These clubs can only play
4 one match at a time, so if they're being organized in Dubai,
5 they can't play in Los Angeles. That's the whole reason that
6 the scope of the restrictive covenant is global in nature. And
7 again, it is very narrow. If the Court looks at the
8 non-compete, it is very narrowly tailored to protect Relevant's
9 legitimate business interests which are protection of its
10 highly confidential proprietary information that we have pled
11 sufficient facts in our verified complaint establishing all of
12 the confidential information that Mr. Stillitano had in his
13 possession.

14 With respect to the balancing of the hardships,
15 Mr. Stillitano, if only barred from competing with us for
16 another few weeks, certainly will not endure undue hardship.
17 But the next few weeks are critical, because as soon as -- if
18 the TRO is lifted, he will actively compete with Relevant and
19 try to host soccer games in the summertime period that would
20 cause irreparable harm and do irreparable damage to Relevant
21 and its business partners using -- its relationship with its
22 business partners using all of the confidential information
23 that he obtained and leveraging all that information to
24 Relevant's detriment. That is precisely the reason that
25 non-competes are enforced in New York. It is to protect this

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1 sort of highly proprietary confidential information and trade
2 secrets from being misappropriated, and that's what Relevant is
3 trying to do here for a limited period of time.

4 In terms of the arbitration, I will note again that
5 these are two separate issues, that Relevant and Mr. Stillitano
6 agreed to adjudicate the scope of the restrictive covenant
7 before a court and separate that issue, and all other issues
8 are adjudicated before an arbitrator.

9 And so once again, if this issue is not addressed by
10 the Court, it's very different than the cases cited by
11 Mr. Stillitano like the *Benihana* case where at issue in those
12 cases are court orders that are enjoining court cases in aid of
13 arbitration. That is not what is happening here. That is very
14 different than the relief we are seeking here. We are seeking
15 affirmative relief from this Court, we are not seeking an order
16 in aid of arbitration. So all of those cases are markedly
17 different and have nothing to do with the circumstances at
18 issue in before the Court now.

19 THE COURT: Thank you. I'm going to give Mr. Hutcher
20 one minute to add anything that he may wish to say in response.
21 If not, I will then close the hearing.

22 MR. HUTCHER: Just very briefly, your Honor. First of
23 all, what Mr. Mufson failed to address is the issue of the
24 failure to pay the \$650,000 in one year. Once again, you can't
25 have it both ways. You can't be relying on the agreement and

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1 then not living up to the terms.

2 Second, the idea that Mr. Stillitano was using
3 confidential information, there is no basis to that. He has
4 not taken any documents, he has not used any confidential
5 information. There is nothing confidential about who plays
6 soccer in the world. The claim that he has used this
7 information is just rank conclusory allegations.

8 The idea also that there is a separation between the
9 restrictive covenant agreement and the contract is just not
10 realistic. In order for those issues to be resolved requires a
11 determination of facts, and that is issues that the parties
12 expressly agreed would be determined in the arbitration.

13 Finally, Judge, the scope of this TRO and injunction
14 that was issued is not only against Stillitano, it involves
15 third parties who have nothing whatsoever to do with Relevant
16 who were not party to any agreement. That they have been
17 enmeshed in this has been extremely detrimental. These parties
18 have respected the TRO and have not taken any action, but that
19 scope of the TRO is so broad that it is extremely, extremely
20 prejudicial.

21 I'll stop there, your Honor.

22 MR. MUFSON: Your Honor, may I respond for 30 seconds
23 to that point?

24 THE COURT: Yes.

25 MR. MUFSON: So first of all, on the \$650,000

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1 severance, this whole issue is a red herring. If one looks at
2 the employment agreement, paragraph 11C provides the severance
3 Mr. Stillitano was entitled to. It uses the defined term "base
4 salary." There's no dispute that if he was terminated without
5 cause or for good reason and he signed a release within 45 days
6 of his termination of employment that he would receive
7 \$625,000. That is a defined term in the agreement, there's no
8 dispute about that.

9 That has nothing to do with the fact that his salary
10 was reduced to \$200,000. It is completely irrelevant to the
11 notion that his salary was reduced and he ratified the
12 reduction of his salary. The fact is Relevent was willing to
13 pay him the \$625,000 in severance if he signed a release.
14 That's precisely what they're obligated to do. One has nothing
15 to do with the other.

16 THE COURT: Mr. Mufson, thank you very much. I'm
17 closing the hearing at this point. I think that you made your
18 arguments quite clear and I don't believe anything further is
19 necessary for the Court to issue a ruling, so I am closing the
20 public hearing.

21 I am persuaded that the Court should not lift the TRO
22 and that the Court's preliminary injunctive relief should
23 remain in effect through May 7.

24 I am persuaded that the covenants agreement
25 non-compete and non-solicitation clause is enforceable both as

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1 to duration and as to geographic scope. One year is not
2 unreasonable in this type of agreement, in fact it's quite
3 common, and given the nature of the business, worldwide scope
4 in this case is also not unreasonable.

5 The Court is persuaded that Relevent, the plaintiff,
6 is likely to succeed on the merits given that it is undisputed
7 that there was a breach of the non-compete agreement by
8 Mr. Stillitano, and that Relevent has admitted evidence of
9 irreparable harm and case law sustaining irreparable harm in
10 these circumstances where an employee engages in direct open
11 competition with his former employer in violation of a clear
12 non-compete clause.

13 Other considerations involve the type of skills that
14 are involved in this case. Like other relevant cases, the
15 skills of Mr. Stillitano are unique, his knowledge is extensive
16 in the field, and it is by no means the garden variety type of
17 employment relationship. Mr. Stillitano did possess trade
18 secrets and proprietary information over many years in his
19 relationship with Relevent.

20 Mr. Hatcher indicates that Mr. Stillitano did not have
21 possession of trade secrets or proprietary information. That,
22 however, is a conclusory statement which raises an issue of
23 fact, either he did or he did not, and the Court is not in a
24 position at this point, without Mr. Stillitano's sworn
25 statements under oath in depositions, to make a determination

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1 as to whether or not he possesses secrets and proprietary
2 information. I think it is not unreasonable for the Court to
3 infer that, given his extensive knowledge of the business and
4 his long relationship with Relevent, that he probably did
5 obtain sufficient trade secret and proprietary information to
6 raise a question as to whether his use of that could sustain a
7 finding of irreparable harm.

8 I believe the balance of hardships and public
9 interests outweigh Mr. Stillitano's burden of the covenant.
10 One of the major public interests here is giving effect to
11 clear provisions of a contractual agreement and clear
12 indication that those provisions were in fact violated by one
13 of the parties. Under the rules of practice in injunctive
14 relief, the Court can bind third parties to the extent there
15 are third parties who are acting either as agents of a
16 defendant or acting in concert with the party and therefore
17 creating a violation by joint action.

18 For all of these reasons, the Court will issue a
19 ruling, an order sustaining the relief that's now in place and
20 finding the covenants agreement enforceable and in effect
21 through May 7.

22 There's one other question which we did not address,
23 which is the request for expedited relief. The Court granted
24 that in the TRO and will reaffirm its grant.

25 Finally, there is a question of bond to secure

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1 compliance, and there is a request from Mr. Stillitano for a
2 bond corresponding to the amount that he believes he is owed.
3 I do not believe that it is necessary at this point for the
4 Court to adopt that number because in effect it would be
5 adopting findings that are part of the arbitration proceeding.
6 I will direct that the plaintiff put up a bond of \$25,000 as
7 sufficient security under these circumstances.

8 I thank you. Have a good day.

9 (Adjourned)